

**BUREAU OF AUTOMOTIVE REPAIR**

**INITIAL STATEMENT OF REASONS**

**HEARING DATE:**

December 13, 2006

**SUBJECT MATTER OF  
PROPOSED REGULATION:**

Public Information Disclosure Policy

**SECTION AFFECTED:**

§ 3303.1 of Title 16, Division 33, Chapter 1,  
Article 1, of the California Code of  
Regulations

**SPECIFIC PURPOSE OF REGULATORY PROPOSAL:**

This proposed regulatory action is intended to update the standards of the Bureau of Automotive Repair (Bureau), with respect to providing information to the public about the Bureau's registrants and licensees. The proposed action will clarify and identify specific information that the Bureau will provide to the public about its registrants and licensees and will set the conditions under which the information will be provided. This proposed action is consistent with, and implements, the Department of Consumer Affairs' (DCA) recommended minimum standards for consumer complaint disclosure.

The proposed action will make the following changes to existing regulation:

- Section 3303.1 of Article 1 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations will be amended as follows:
  1. Subsection (a) will be recast as an unnumbered introductory paragraph and will be amended to reflect the establishment of the Bureau's general policy for making information available regarding registrations and licenses issued by the Bureau, administrative actions and complaints. The amendments specify that requests may be made by telephone, in person or in writing, including by facsimile or electronic mail transmission, provide for a response by the Bureau within ten (10) days of receipt of a written request for information, and provide that the Bureau shall provide the information in writing.

Establishing the Bureau's general policy for making information available regarding registrations/licenses, administrative actions and complaints is necessary in order to inform the public and implement a consistent, uniform information disclosure system within the Bureau.

The requirements for responding to requests within ten (10) days and to provide information in writing are necessary to provide a structure to the information system consistent with the provisions of the California Public Records Act<sup>1</sup> (CPRA), and to implement and be as consistent as possible with DCA's recommended minimum standards for consumer complaint disclosure.

2. The current subsection (a) will be replaced with the provisions of the current subsection (d), with minor modifications that clarify what information will be provided regarding registrations or licenses. The requirement to include the reason for "termination" of a license will be eliminated.

This clarification is necessary to properly inform interested parties and to maintain a consistent format throughout Section 3303.1. The elimination of the requirement to include the reason for "termination" of a license is appropriate because the status of the license (i.e., delinquent, suspended, revoked, cancelled by request, etc.) adequately describes the reason for any "termination" and further explanation or description would be redundant and unnecessary.

3. The current subsection (b) will be renumbered as subsection (c) and will be replaced with revised and expanded provisions from the current subsection (c) that clarify the conditions under which the Bureau will disclose information about administrative actions and the information that will be provided.

These amendments are necessary to clarify and specify the conditions under which the Bureau will disclose information about administrative actions and to clarify the information that will be provided. The changes are necessary to properly inform interested parties and to maintain a consistent format throughout Section 3303.1, and to implement and be consistent with DCA's recommended minimum standards for consumer complaint disclosure.

4. The current subsection (c) will be renumbered as subsection (b) and will be replaced with revised and expanded provisions from the current subsection (a) that clarify the conditions under which the Bureau will disclose information about complaints and the information that will be provided. This amendment will eliminate references to a "waiver of confidentiality" and the issuance of a "Notice of Violation" (NOV).

The elimination of the reference to a "waiver of confidentiality" and the issuance of a NOV is necessary to simplify and clarify this regulation in the implementation of DCA's recommended standards.

The so called "waiver of confidentiality," which is currently signed by a licensee when requesting certain information from the licensee's file, has no bearing on

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<sup>1</sup> Government Code § 6250, et seq.

the disclosure of public information by the Bureau. The purpose of the “waiver” is to inform and notify the licensee that any information or record provided to him or her, whether exempt from mandatory disclosure or not, will thereafter become public information available to anyone. The CPRA controls what is and what is not a public record or public information. Under the CPRA, the right to withhold disclosure of a record is conferred upon the agency that has possession of the record. For example, subdivision (f) of Government Code section 6254 exempts from mandatory disclosure records of complaints. The decision to disclose complaint information is clearly discretionary since disclosure is not expressly prohibited, but it is at the agency’s discretion not the parties to the complaint. The reference to a “waiver of confidentiality” should be removed from this regulation since the licensee is not waiving any right by executing this document.

The elimination of the reference to issuance of a NOV as affecting the disclosure of complaint information is appropriate because the Bureau has permanently discontinued its use of the NOV. Since the NOV no longer exists, and since the Bureau will no longer use it as a determining factor in disclosing consumer complaint information, any reference to the NOV should be removed from this regulation.

5. The current subsection (d) will be replaced with a definition, for purposes of Section 3303.1, of the term “administrative action.”

For convenience, consistency and brevity, the general term “administrative action” is used throughout Section 3303.1 to describe actions that include Accusations, Statements of Issues, and Administrative Citations. In order for there to be a clear understanding of what that term means, it is necessary to define its meaning for the purposes of this section.

6. The current subsection (e) will be repealed in its entirety.

The elimination of the requirement to provide a copy to the registrant or licensee of the complaint information provided to a requester is an unnecessary and overly burdensome requirement, and strains the Bureau’s resources for responding to public information requests. Further, there is no requirement in the CPRA, or in any other applicable body of law, to provide this notification and it should be repealed. Further, DCA and/or the Bureau may elect to make this public information available electronically through their Web sites, where notification to the registrant or licensee becomes impractical, given the potential volume of requests.

7. The current subsection (f) will be repealed in its entirety.

The repeal of this subsection is necessary because limiting the volume of requests that the Bureau will respond to from one requestor to no more than three (3) registrations or licenses per week is unduly restrictive and unenforceable.

Furthermore, the CPRA already includes adequate provision for dealing with voluminous requests. The current limitation is, therefore, unnecessary and its repeal will help to ensure that the Bureau's system for responding to requests for all types of information is consistent with DCA's recommended minimum standards for consumer complaint disclosure.

8. Other nonsubstantive editorial, grammatical and conforming changes will also be made throughout Section 3303.1. These changes are necessary for clarification and consistency, and to conform to the amendments described above.

### **FACTUAL BASIS/RATIONALE:**

The Bureau of Automotive Repair (Bureau) was established within the California Department of Consumer Affairs (DCA) in 1972 with the enactment of the Automotive Repair Act<sup>2</sup>. The Bureau was created by Chapter 1578, Statutes 1971 (Senate Bill 51, Beilenson), which mandated a statewide automotive repair consumer protection program. In the furtherance of its mandate, the Bureau administers statewide licensing and enforcement programs.

Through its statewide offices, the Bureau conducts consumer protection services related to the automotive repair and Smog Check programs. Bureau representatives register, license and regulate automotive repair dealers, lamp and brake stations and adjusters, and Smog Check stations and technicians. The Bureau accepts and mediates complaints from the public, investigates violations of the Automotive Repair Act, Smog Check laws, and associated regulations. When appropriate, cases are referred to the Attorney General's office for administrative action, or to law enforcement authorities for civil or criminal prosecution. The Bureau shares the commitment of the DCA to ensuring that consumers are provided information about licensees and registrants in a timely, fair and equitable manner.

The CPRA states that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The CPRA provides for maximum public access to information in the government's possession. It also provides that disclosure of information about complaints is not mandatory under the CPRA<sup>3</sup>. However, such information may be subject to public disclosure at the discretion of the agency in possession of that information. The standards for disclosure of consumer complaint information recommended by DCA are consistent with the intent of the CPRA and the Consumer Affairs Act<sup>4</sup> (CAA). The CAA establishes one of the DCA's most important consumer protection mandates: "educating and informing the consumer to ensure informed consumer choice in the marketplace." In light of the CPRA

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<sup>2</sup> Business and Professions Code § 9880, et seq.

<sup>3</sup> Subdivision (f) of § 6254 of the Government Code.

<sup>4</sup> Business and Professions Code § 300, et seq.

and the CAA, DCA and the Bureau believe there is a compelling state interest to disclose information regarding certain consumer complaints as soon as practical to help consumers make informed decisions.

It should also be noted that while the Information Practices Act<sup>5</sup> (IPA) and Article 1, Section 1 of the California Constitution place limitations on releasing personal information, they do not preclude the release of general information about consumer complaints. It is DCA's and the Bureau's view that disclosing the fact that a consumer complaint exists is consistent with the personal privacy protections at issue in the IPA, as those privacy rights apply to personal identifying information, not to information relating to the conduct of business.

In keeping with the maximum disclosure intent of the CPRA and the CAA, it is the policy of the Bureau to provide registrant and licensee information to consumers consistent with the minimum standards recommended by DCA. In the past, in addition to license status and disciplinary history, the Bureau has disclosed consumer complaint information when the complaint has resulted in the issuance of a NOV to the registrant or licensee. The Bureau has discontinued its use of the NOV as a method of informally notifying a registrant or licensee of minor or technical violations confirmed in the review and processing of consumer complaints. As a result, the Bureau's regulations must be updated to delete the reference to the NOV and the disclosure of consumer complaints with NOVs. Instead, the Bureau intends to follow the recommended standards of DCA as the determining factors in disclosing complaint information.

The Bureau remains committed to ensuring that consumers are provided appropriate information about the status of a registrant or licensee, and any administrative actions taken against that registration or license. Every effort is made to provide such information in a timely, fair and equitable manner. The proposed action is intended to update and establish clear standards for disclosing such information.

#### **Underlying Data:**

- *Recommended Minimum Standards for Consumer Complaint Disclosure*, Department of Consumer Affairs

#### **Business Impact:**

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

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<sup>5</sup> Civil Code § 1798, et seq.

The proposed action does not impose any requirement upon or require any action by any business.

**Specific Technologies or Equipment:**

This regulation does not mandate the use of specific technologies or equipment.

**Consideration of Alternatives:**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

No alternatives have been identified or considered.